IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.6046 OF 2004

Mahadev Gangaram Kupwade ..Petitioner.
Vs.
Smt. Sonabai Sawanta Mule
since deceased through L.Rs. ..
Respondents.

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Mr. R.V. More for the Petitioner.
Mr. N.V. Walawalkar, Senior Advocate with Mr. Sudhir Prabhu i/b
Mr. G.H. Keluskar for Respondent Nos.1A to 1D.

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CORAM : DR.D.Y.CHANDRACHUD, J.
16th March, 2006**.**

P.C. :

Rule, returnable forthwith with the consent of counsel. With the consent of counsel, taken up for final disposal.

1. By the impugned order dated 1st November, 2003, the Trial Court has declined to condone the delay in moving an application for bringing the legal heirs of the sole Respondent on the record. The Petitioner instituted Regular Civil Suit 371 of 1990 for a permanent injunction against the Original Defendant in the Court of the Civil Judge, Junior Division, Miraj. The suit was dismissed by the Civil Judge, Junior Division, Miraj on 9th November, 1993 and an appeal was preferred by the Petitioner on 27th December, 1993 before the District Judge at Sangli. The Respondent expired on

23rd August, 1996. On 23rd January, 2001 an application was moved by the Petitioner for condoning the delay in bringing the heirs of the Original Defendant on the record and in that application, it was averred that the Petitioner is illiterate, that he has no knowledge of law and that he was unaware of the death of the sole Respondent. Further more, it was also stated that the heirs of the Original Defendant had not informed the Petitioner of the death of the Defendant.

2. The application was dismissed by the Additional District Judge at Sangli principally on the ground that the advocate for the Original Defendant had filed a purshis on 10th October, 1996 stating that the Defendant had expired on 23rd August, 1996. A perusal of Order 22 Rule 10-A of the Code of Civil Procedure, 1908 would show that when a pleader appearing for a suit comes to know of the death of either party, the law mandates that he shall inform the Court about it. Thereupon it is obligatory for the Court to give notice of such death to the other party. In the present case, the mere filing of the purshis by the advocate for the Original Defendant would not absolve the Trial Court of the obligation of informing the Petitioner who is the Original Plaintiff by the issuance

of a notice. Hence, the Learned Additional District Judge was not justified in declining to condone the delay only on the ground that a purshis was filed by the advocate for the Defendant of the death of the Defendant. The approach of the Court in such case must be guided by the law laid down by the Supreme Court in **Ram Nath Sao alias Ram Nath Sahu v. Gobardhan Sao** ((2002) 3 SCC 195), where the Supreme Court held thus :

> "Thus it becomes plain that the expression "sufficient cause" within the meaning of Section 5 of the Act or Order 22 Rule 9 of the Code or any other similar provision should receive a liberal construction so as to advance substantial justice when no negligence or inaction or want of bona fides is imputable to a party. In a particular case whether explanation furnished would constitute "sufficient cause" or not will be dependent upon facts of each case. There cannot be a straitjacket formula for accepting or rejecting explanation furnished for the delay caused in taking steps. But one thing is clear that the courts should not proceed with the tendency of finding fault with the cause shown and reject the petition by a slipshod order in over-jubilation of disposal drive. Acceptance of explanation furnished should be the rule and refusal, an exception, more so when no negligence or inaction or want of bona fides can be imputed to the defaulting party. On the other hand, while considering the matter the courts should not lose sight of the fact that by not taking steps within the time prescribed a valuable right has accrued to the other party which should not be lightly defeated by condoning delay in a routine – like manner. However, by taking a pedantic and hypertechnical view of the matter the explanation furnished should not be rejected when stakes are high and/or arguable points of facts and law are involved in the case, causing enormous loss and irreparable

> injury to the party against whom the lis terminates, either by default or inaction and defeating valuable right of such a party to have the decision on merit. While considering the matter, courts have to strike a balance between resultant effect of the order it is going to pass upon the parties either way."

3. In the circumstances, I am of the view that the application filed by the Petitioner at Exh.18 in Regular Civil Appeal 647 of 1993 shall stand allowed. However, it shall be subject to the payment of costs quantified at Rs.2,000/-, to be deposited before the Trial Court within a period of four weeks from today, which shall be a condition precedent . Petition disposed of.